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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,259	08/01/2001	Henry Houh	EMPIR-031AUS	4028
22468	7590	10/05/2005	EXAMINER	
CHAPIN & HUANG L.L.C. WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581			JEAN, FRANTZ B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,259

Applicant(s)

HOUH, HENRY

Examiner

Frantz B. Jean

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/01/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is a first office action in response to application filed 08/01/01. Claims 1-39 are presented for examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite "instructions" and "at least one function". It is unclear as to what types of instructions and function applicant is referring to.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/920,482. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are inherent over the claims of the patent numbers listed above. All the limitations of the claims of the present application are included/recited in the claims of the patent numbers cited above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 51-55 of copending Application No. 09/920,469. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are inherent over the claims of the patent numbers listed above. All the limitations of the claims of the present application are included/recited in the claims of the patent numbers cited above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. US patent Number 6,845,352.

As per claim 1, Wang teaches a test system for testing network environments and devices (col. 1 lines 13- et seq) comprising: a network processor (see fig 2; col. 4 lines 15 et seq); storage associated with said network processor (storage is inherent in the network processor); an interface coupling an output of said network processor to a communications network; (see fig 2 col. 4 line 15 to col. 5 line 37); and instructions (commands) and data within said storage, said instructions and data directing said network processor to provide at least one function (col. 5 lines 15 et seq).

As per claim 2, Wang teaches a test system of claim 1 wherein said at least one function is selected from the group consisting of a network emulator, a network profile generator, a network profile capture tool, a packet generation tool, an application traffic generation tool, a real-time packet analysis tool, and a network packet capture and analysis tool (col 10 lines 36-44).

As per claim 3, Wang teaches a test system of claim 1 wherein said test system is utilized with a variety of different protocols (such as VOIP, TCP/IP etc... col. 1 line 27 and col 4 line 50).

As per claim 4, Wang teaches a test system of claim 3 wherein said protocols are selected from the group consisting of TCP, TCP/IP, MPLS, SCTP, UDP, and RTP (col. 4 lines 41-55).

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As per claim 5, Wang teaches a test system of claim 1 wherein said test system is utilized with a variety of different interfaces (fig 2; network interface, user interfaces et...).

As per claim 6, Wang anticipates a test system of claim 5 wherein said interfaces are selected from the group consisting of 10Mbit Ethernet, 100Mbit Ethernet, 1 gigabit Ethernet, 1.0625 Gigabit Fibrechannel, OC-3c, OC-12, OC-12c, T1/E1, and T3/E3 (inherent in Wang see fig 2 col. 4 lines 10 et seq).

As per claim 7, Wang teaches a test system of claim 1 further comprising at least one additional network processor (see fig 2 and 5).

As per claim 8, Wang teaches a test system of claim 7 where at least one additional network processor is in communication with said network processor (see fig 2-5).

As per claim 9, Wang teaches a test system of claim 1 further comprising a Central Processing Unit (CPU), said CPU in communication with said network processor (see fig 2-5).

As per claim 10, Wang teaches a test system of claim 7 wherein said network processor is utilized as an accelerator to analyze data at line rates (see fig 2-5).

As per claim 11, Wang teaches a test system of claim 9 wherein said network processor provides data to said CPU for analysis (see fig 2-5).

As per claim 12, Wang teaches a test system of claim 9 wherein said CPU has a feedback loop to said network processor (see fig 2-5).

As per claim 13, Wang teaches a test system of claim 1 wherein said test system changes from providing a first function to providing a second function by changing the instructions and data in said storage (see fig 2-5).

As per claim 14, Wang teaches a test system of claim 1 wherein said test system provides additional functions simultaneously to the network processor by loading multiple sets of instructions in said storage (see fig 2-5).

As per claim 15, Wang teaches a computer program product comprising a computer usable medium having computer readable code thereon, including program code comprising: instructions for causing a network processor to provide at least one test function for testing network environments or devices (col. 1 lines 13 et seq; col. 5 lines 5 et seq.).

Claims 16-25 depend on claim 15 that is directed to a computer program product having a computer usable medium that has a computer readable code. These claims were already discussed above. Therefore, they are rejected under the same rationale.

Claims 26-39 are directed to a method of testing network environment and devices, which contain the same limitations as discussed above in the system claims. Therefore, they are rejected on the same rationale.

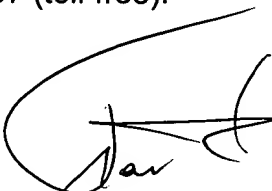
The prior art to Kung et al., Sicher et al., Creamer et al., Grieco et al. contain limitations that are relevant to the claimed invention. Applicant is requested to consider these prior art of record upon responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean



FRANTZ B. JEAN
PRIMARY EXAMINER